
SUBSTITUTE HOUSE BILL 1738

State of Washington

60th Legislature

2007 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives B. Sullivan and Chase)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to ballast water management; amending RCW
2 77.120.010, 77.120.020, 77.120.030, and 77.120.070; amending 2004 c 227
3 s 2 (uncodified); adding new sections to chapter 77.120 RCW; repealing
4 RCW 77.120.060, 77.120.080, and 77.120.090; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.120.010 and 2000 c 108 s 2 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Ballast tank" means any tank or hold on a vessel used for
11 carrying ballast water, whether or not the tank or hold was designed
12 for that purpose.

13 (2) "Ballast water" means any water and matter taken on board a
14 vessel to control or maintain trim, draft, stability, or stresses of
15 the vessel, without regard to the manner in which it is carried.

16 (3) "Empty/refill exchange" means to pump out, until the tank is
17 empty or as close to empty as the master or operator determines is
18 safe, the ballast water taken on in ports, estuarine, or territorial
19 waters, and then refilling the tank with open sea waters.

1 (4) "Exchange" means to replace the water in a ballast tank using
2 either flow through exchange, empty/refill exchange, or other exchange
3 methodology recommended or required by the United States coast guard.

4 (5) "Flow through exchange" means to flush out ballast water by
5 pumping in midocean water at the bottom of the tank and continuously
6 overflowing the tank from the top until three full volumes of water
7 have been changed to minimize the number of original organisms
8 remaining in the tank.

9 (6) "Nonindigenous species" means any species or other viable
10 biological material that enters an ecosystem beyond its natural range.

11 (7) "Open sea exchange" means an exchange that occurs fifty or more
12 nautical miles offshore. If the United States coast guard requires a
13 vessel to conduct an exchange further offshore, then that distance is
14 the required distance for purposes of compliance with this chapter.

15 (8) "Recognized marine trade association" means those trade
16 associations in Washington state that promote improved ballast water
17 management practices by educating their members on the provisions of
18 this chapter, participating in regional ballast water coordination
19 through the Pacific ballast water group, assisting the department in
20 the collection of ballast water exchange forms, and the monitoring of
21 ballast water. This includes members of the Puget Sound marine
22 committee for Puget Sound and the Columbia river steamship operators
23 association for the Columbia river.

24 (9) "Sediments" means any matter settled out of ballast water
25 within a vessel.

26 (10) "Untreated ballast water" includes exchanged or unexchanged
27 ballast water that has not undergone treatment.

28 (11) "Vessel" means a ~~((self-propelled))~~ ship ~~((in commerce of
29 three hundred gross tons or more))~~, boat, barge, or other floating
30 craft of three hundred gross tons or more, United States and foreign,
31 carrying, or capable of carrying, ballast water into the coastal waters
32 of the state after operating outside of the coastal waters of the
33 state, except those vessels described in RCW 77.120.020.

34 (12) "Voyage" means any transit by a vessel destined for any
35 Washington port.

36 (13) "Waters of the state" means any surface waters, including
37 internal waters contiguous to state shorelines within the boundaries of
38 the state.

1 **Sec. 2.** RCW 77.120.020 and 2000 c 108 s 3 are each amended to read
2 as follows:

3 (1) This chapter applies to all vessels carrying ballast water into
4 the waters of the state from a voyage, except:

5 (a) A vessel of the United States department of defense or United
6 States coast guard subject to the requirements of section 1103 of the
7 national invasive species act of 1996, or any vessel of the armed
8 forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to
9 the uniform national discharge standards for vessels of the armed
10 forces under 33 U.S.C. Sec. 1322(n);

11 (b) A vessel (~~((i))~~) that discharges ballast water or sediments
12 only at the location where the ballast water or sediments originated,
13 if the ballast water or sediments do not mix with ballast water or
14 sediments from areas other than open sea waters(~~((; or (ii) that does
15 not discharge ballast water in Washington waters))~~); and

16 (c) A vessel (~~((traversing the internal waters of Washington in the
17 Strait of Juan de Fuca, bound for a port in Canada, and not entering or
18 departing a United States port, or a vessel in innocent passage, which
19 is a vessel merely traversing the territorial sea of the United States
20 and not entering or departing a United States port, or not navigating
21 the internal waters of the United States; and~~

22 ~~((d) A crude oil tanker that does not exchange or discharge ballast
23 water into the waters of the state))~~ in innocent passage, merely
24 traversing the territorial sea of the United States and not entering or
25 departing a United States port, or not navigating the internal waters
26 of the United States, and that does not discharge ballast water into
27 the waters of the state.

28 (2) This chapter does not authorize the discharge of oil or noxious
29 liquid substances in a manner prohibited by state, federal, or
30 international laws or regulations. Ballast water containing oil,
31 noxious liquid substances, or any other pollutant shall be discharged
32 in accordance with the applicable requirements.

33 (3) The master or operator in charge of a vessel is responsible for
34 the safety of the vessel, its crew, and its passengers. Nothing in
35 this chapter relieves the master or operator in charge of a vessel of
36 the responsibility for ensuring the safety and stability of the vessel
37 or the safety of the crew and passengers.

1 **Sec. 3.** RCW 77.120.030 and 2004 c 227 s 3 are each amended to read
2 as follows:

3 (1) The owner or operator in charge of any vessel covered by this
4 chapter is required to ensure that the vessel under their ownership or
5 control does not discharge ballast water into the waters of the state
6 except as authorized by this section.

7 ~~((1) Discharge into waters of the state is authorized if the
8 vessel has conducted an open sea exchange of ballast water. A vessel
9 is exempt from this requirement if the vessel's master reasonably
10 determines that such a ballast water exchange operation will threaten
11 the safety of the vessel or the vessel's crew, or is not feasible due
12 to vessel design limitations or equipment failure. If a vessel relies
13 on this exemption, then it may discharge ballast water into waters of
14 the state, subject to any requirements of treatment under subsection
15 (2) of this section and subject to RCW 77.120.040.))~~

16 (2) ~~((After July 1, 2007,))~~ Discharge of ballast water into waters
17 of the state is authorized only if there has been an open sea exchange,
18 or if the vessel has treated its ballast water to meet standards set by
19 the department consistent with applicable state and federal laws.
20 ~~((When weather or extraordinary circumstances make access to treatment
21 unsafe to the vessel or crew, the master of a vessel may delay
22 compliance with any treatment required under this subsection until it
23 is safe to complete the treatment.))~~

24 (3) ~~((Masters, owners, operators, or persons in charge shall submit
25 to the department an interim ballast water management report by July 1,
26 2006, in the form and manner prescribed by the department. The report
27 shall describe actions needed to implement the ballast water
28 requirements in subsection (2) of this section, including treatment
29 methods applicable to the class of the vessel. Reports may include a
30 statement that there are no treatment methods applicable to the vessel
31 for which the report is being submitted.~~

32 (4) ~~The ballast water work group created in section 1, chapter 282,
33 Laws of 2002 shall develop recommendations for the interim ballast
34 water management report. The recommendations must include, but are not
35 limited to:~~

36 (a) ~~Actions that the vessel owner or operator will take to
37 implement the ballast water requirements in subsection (2) of this~~

1 ~~section, including treatment methods applicable to the class of the~~
2 ~~vessel;~~

3 ~~(b) Necessary plan elements when there are not treatment methods~~
4 ~~applicable to the vessel for which the report is being submitted, or~~
5 ~~which would meet the requirements of this chapter; and~~

6 ~~(c) The method, form, and content of reporting to be used for such~~
7 ~~reports.~~

8 ~~(5) For treatment technologies requiring shipyard modification that~~
9 ~~cannot reasonably be performed prior to July 1, 2007, the department~~
10 ~~shall provide the vessel owner or operator with an extension to the~~
11 ~~first scheduled drydock or shipyard period following July 1, 2007.~~

12 ~~(6) The department shall make every effort to align ballast water~~
13 ~~standards with adopted international and federal standards while~~
14 ~~ensuring that the goals of this chapter are met.~~

15 ~~(7) The requirements of this section do not apply to a vessel~~
16 ~~discharging ballast water or sediments that originated solely within~~
17 ~~the waters of Washington state, the Columbia river system, or the~~
18 ~~internal waters of British Columbia south of latitude fifty degrees~~
19 ~~north, including the waters of the Straits of Georgia and Juan de Fuca.~~

20 ~~(8) Open sea exchange is an exchange that occurs fifty or more~~
21 ~~nautical miles offshore. If the United States coast guard requires a~~
22 ~~vessel to conduct an exchange further offshore, then that distance is~~
23 ~~the required distance for purposes of compliance with this chapter))~~

24 The department, in consultation with the ballast water work group, or
25 a similar collaborative forum, shall adopt by rule standards for the
26 discharge of ballast water into the waters of the state and their
27 implementation timelines. The standards are intended to ensure that
28 the discharge of ballast water poses minimal risk of introducing
29 nonindigenous species. In developing these standards, the department
30 shall consider the extent to which the requirement is technologically
31 and practically feasible. Where practical and appropriate, the
32 standards must be compatible with standards set by the United States
33 coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or
34 the international maritime organization.

35 (4) The master, operator, or person in charge of a vessel is not
36 required to conduct an open sea exchange or treatment of ballast water
37 if the master decides that the practice would threaten the safety of
38 the vessel, its crew, or its passengers, because of adverse weather,

1 vessel design limitations, equipment failure, or any other
2 extraordinary conditions. A master, operator, or person in charge of
3 a vessel who relies on this exemption must file documentation defined
4 by the department, subject to: (a) Payment of a fee not to exceed five
5 thousand dollars; (b) discharging only the minimal amount of ballast
6 water operationally necessary; (c) ensuring that ballast water records
7 accurately reflect any reasons for not complying with the mandatory
8 requirements; and (d) any other requirements identified by the
9 department by rule as provided in subsections (3) and (6) of this
10 section.

11 (5) For treatment technologies requiring shipyard modification, the
12 department may enter into a compliance plan with the vessel owner. The
13 plan must include a timeline consistent with drydock and shipyard
14 schedules for completion of the modification. The department shall
15 adopt rules for compliance plans under this subsection.

16 (6) For an exemption claimed in subsection (4) of this section, the
17 department shall adopt rules for defining exemption conditions,
18 requirements, compliance plans, or alternative ballast water management
19 strategies to meet the intent of this section.

20 (7) The department shall make every effort to align ballast water
21 standards with adopted international and federal standards while
22 ensuring that the goals of this chapter are met.

23 (8) The requirements of this section do not apply to a vessel
24 discharging ballast water or sediments that originated solely within
25 the waters of Washington state, the Columbia river system, or the
26 internal waters of British Columbia south of latitude fifty degrees
27 north, including the waters of the Straits of Georgia and Juan de Fuca.

28 (9) Open sea exchange is an exchange that occurs fifty or more
29 nautical miles offshore. If the United States coast guard requires a
30 vessel to conduct an exchange further offshore, then that distance is
31 the required distance for purposes of compliance with this chapter.

32 **Sec. 4.** 2004 c 227 s 2 (uncodified) is amended to read as follows:

33 (1) The director of the department (~~of fish and wildlife~~) must
34 establish the ballast water work group.

35 (2) The ballast water work group consists of the following
36 individuals:

1 (a) One staff person from the governor's executive policy office.
2 This person must act as chair of the ballast water work group;
3 (b) Two representatives from the Puget Sound steamship operators;
4 (c) Two representatives from the Columbia river steamship
5 operators;
6 (d) Three representatives from the Washington public ports, one of
7 whom must be a marine engineer;
8 (e) Two representatives from the petroleum transportation industry;
9 (f) One representative from the Puget Sound water quality action
10 team;
11 (g) Two representatives from the environmental community;
12 (h) One representative of the shellfish industry;
13 (i) One representative of the tribes;
14 (j) One representative of maritime labor; ((and))
15 (k) One representative from the department ((of fish and
16 wildlife));
17 (l) One representative from the department of ecology; and
18 (m) One representative from the cruise ship industry.
19 (3) The ballast water work group must ((study, and provide a report
20 to the legislature by December 15, 2006, the following issues:
21 (a) All issues relating to ballast water technology, including
22 exchange and treatment methods, management plans, the associated costs,
23 and the availability of feasible and proven ballast water treatment
24 technologies that could be cost-effectively installed on vessels that
25 typically call on Washington ports;
26 (b) The services needed by the industry and the state to protect
27 the marine environment, including penalties and enforcement;
28 (c) The costs associated with, and possible funding methods for,
29 implementing the ballast water program;
30 (d) Consistency with federal and international standards, and
31 identification of gaps between those standards, and the need for
32 additional measures, if any, to meet the goals of this chapter;
33 (e) Describe how the costs of treatment required as of July 1,
34 2007, will be substantially equivalent among ports where treatment is
35 required;
36 (f) Describe how the states of Washington and Oregon are
37 coordinating their efforts for ballast water management in the Columbia
38 river system; and

1 ~~(g) Describe how the states of Washington, Oregon, and California~~
2 ~~and the province of British Columbia are coordinating their efforts for~~
3 ~~ballast water management on the west coast.~~

4 ~~(4) The ballast water work group must begin operation immediately~~
5 ~~upon the effective date of this section. The Puget Sound water quality~~
6 ~~action team must provide staff for the ballast water work group. The~~
7 ~~staff must come from existing personnel within the team)) begin~~
8 ~~operation immediately upon the effective date of this section. The~~
9 ~~Puget Sound water quality action team or its successor agency must~~
10 ~~provide staff for the ballast water work group from existing personnel~~
11 ~~within the action team. The ballast water work group must:~~

12 (a) Provide a report to the legislature by July 1, 2009, on the
13 progress of the work group on the tasks listed in this section, and
14 report on compliance with this act, and recommendations for
15 improvements, if any, to the ballast water program;

16 (b) Work with the state of Oregon to develop a consistent,
17 coordinated, and enforceable ballast water management program for the
18 Columbia river that is acceptable to both states;

19 (c) Advise the department as it develops a program to establish and
20 maintain an inventory of introduced nonindigenous plants and animals in
21 state waters in and adjacent to ports, harbors, oil transfer
22 facilities, grain elevators, and other ship berthing facilities and
23 evaluate the effectiveness of the program and a program to assess
24 vessel specific risks;

25 (d) Help the department review the needs of the ballast water
26 program, including research investments, and identify unmet needs.
27 Work through the Puget Sound action team and the department's internal
28 budget development process to secure needed funds;

29 (e) Help the department develop and align the state program with
30 national and regional ballast water management programs;

31 (f) Assist the department by developing a workable technical and
32 financial assistance program to support the shipping industry comply
33 with state ballast water laws and rules;

34 (g) Work with the United States coast guard and the department of
35 ecology to improve coordination and integration of vessel inspection
36 procedures among agencies that board and inspect vessels and identify
37 ways to minimize apparent duplication of effort, work more effectively

1 with vessel masters and crew, and recommend changes to state law to
2 streamline the program, if needed;

3 (h) Outline funding, policy, and program recommendations to support
4 the state's management program;

5 (i) Coordinate, in association with the departments of fish and
6 wildlife, ecology, and natural resources, the Puget Sound action team,
7 the Washington invasive species council, and other interested parties,
8 the development of a management approach for nonballast water ship
9 vectors as a source of nonindigenous species such as ship hull fouling,
10 sea chests and equipment, and vessels equipped with ballast tanks that
11 carry no ballast onboard;

12 (j) Review and provide comment on proposed federal legislation,
13 international and regional other programs, and other policy arenas;

14 (k) Harmonize the state ballast water program with western coastal
15 states, British Columbia, and Canada;

16 (l) Work with the department's science advisory panel to develop a
17 science research plan and estimated costs to answer key research and
18 management questions;

19 (m) Provide recommendations and technical information to assist the
20 department in determining if and when it is necessary or advisable to
21 adjust rules and guidance for the ballast water management program to
22 achieve resource goals and objectives;

23 (n) Other responsibilities, as necessary.

24 ~~((+5))~~ (4) The director must also monitor the activities of the
25 task force created by the state of Oregon in 2001 Or. Laws 722,
26 concerning ballast water management. The director shall provide the
27 ballast water work group with periodic updates of the Oregon task
28 force's efforts at developing a ballast water management system.

29 ~~((+6)(a) The ballast water work group expires June 30, 2007.~~

30 ~~(b) This section expires June 30, 2007.))~~

31 **Sec. 5.** RCW 77.120.070 and 2000 c 108 s 8 are each amended to read
32 as follows:

33 ~~(1) ((Except as limited by subsection (2) or (3) of this section,))~~
34 The department may establish by rule schedules for any penalty allowed
35 in this chapter. The schedules may provide for the incremental
36 assessment of a penalty based on criteria established by rule.

1 (2) The director or the director's designee may impose a civil
2 penalty or warning for a violation of the requirements of this chapter
3 on the owner or operator in charge of a vessel who fails to comply with
4 the requirements imposed under RCW 77.120.030 and 77.120.040. The
5 penalty shall not exceed (~~five~~) twenty-seven thousand five hundred
6 dollars for each day of a continuing violation. In determining the
7 amount of a civil penalty, the department shall set standards by rule
8 that consider if the violation was intentional, negligent, or without
9 any fault, and shall consider the quality and nature of risks created
10 by the violation. The owner or operator subject to such a penalty may
11 contest the determination by requesting an adjudicative proceeding
12 within twenty days. Any determination not timely contested is final
13 and may be reduced to a judgment enforceable in any court with
14 jurisdiction. If the department prevails using any judicial process to
15 collect a penalty under this section, the department shall also be
16 awarded its costs and reasonable attorneys' fees.

17 (~~(2) The civil penalty for a violation of reporting requirements~~
18 ~~of RCW 77.120.040 shall not exceed five hundred dollars per~~
19 ~~violation.))~~

20 (3) (~~Any owner or operator who knowingly, and with intent to~~
21 ~~deceive, falsifies a ballast water management report form is liable for~~
22 ~~a civil penalty in an amount not to exceed five thousand dollars per~~
23 ~~violation, in addition to any criminal liability that may attach to the~~
24 ~~filing of false documents.~~

25 (4)) The department, in cooperation with the United States coast
26 guard, may enforce the requirements of this chapter.

27 NEW SECTION. Sec. 6. A new section is added to chapter 77.120 RCW
28 to read as follows:

29 The department may assess a fee for any exemptions allowed under
30 this chapter. Such a fee may not exceed five thousand dollars. The
31 department may establish by rule schedules for any fee allowed in this
32 chapter. The schedules may provide for the incremental assessment of
33 a penalty based on criteria established by rule.

34 NEW SECTION. Sec. 7. A new section is added to chapter 77.120 RCW
35 to read as follows:

36 (1) The ballast water management account is created in the state

1 treasury. All receipts from legislative appropriations, gifts, grants,
2 donations, penalties, and mitigation fees received under this chapter
3 must be deposited into the account.

4 (2) Expenditures from the account may be used only to carry out the
5 purposes of this chapter or support the goals of the chapter through
6 research and monitoring except:

7 (a) Expenditures may not be used for the salaries of permanent
8 department employees; and

9 (b) Penalties deposited into the account may be used, in
10 consultation with the ballast water work group created in section 4 of
11 this act, only to support basic and applied research and carry out
12 education and outreach related to the state's ballast water management.

13 NEW SECTION. **Sec. 8.** Section 4 of this act is added to chapter
14 77.120 RCW.

15 NEW SECTION. **Sec. 9.** The following acts or parts of acts are each
16 repealed:

17 (1) RCW 77.120.060 (Report to legislature--Results of chapter) and
18 2002 c 282 s 4 & 2000 c 108 s 7;

19 (2) RCW 77.120.080 (Legislative review of chapter--Recommendations)
20 and 2000 c 108 s 9; and

21 (3) RCW 77.120.090 (Ballast water information system--Improvements)
22 and 2002 c 282 s 5.

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